

HAROLD A. HINKLE
MICHAEL B. HINKLE
THOMAS J. POTTER

IBLA 84-5

Decided November 16, 1983

Appeal from decision of Montana State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. M MC 102541.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file with the Bureau of Land Management within 90 days after location of the claim a copy of the notice of location. This requirement is mandatory, not discretionary.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure of a claimant to file an instrument required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive the requirements of the Act, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Thomas J. Potter, Michael B. Hinkle, and Harold A. Hinkle, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Thomas J. Potter, Michael B. Hinkle, and Harold A. Hinkle appeal the Montana State Office, Bureau of Land Management (BLM), decision of August 31, 1983, which declared the unpatented Jack Nimble lode mining claim, M MC 102541, abandoned and void because the copy of the location notice was not filed with BLM within 90 days after location of the claim, as required by

section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The claim was located July 30, 1982. A copy of the location notice was not filed with BLM until August 26, 1983.

Appellants state they were not aware of the requirement that a copy of the location notice be filed with BLM within 90 days after location. They aver they have performed the annual assessment work for both 1982 and 1983, recording the 1982 proof in Powell County, Montana, August 6, 1982, and the 1983 proof on September 2, 1983.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located after October 21, 1976, must file with BLM a copy of the official record of the location notice within 90 days after location. This statutory requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute an abandonment of the claim by the owners and renders the claim void. Herbert Cilch, 73 IBLA 171 (1983); Thomas O. Hall, 72 IBLA 319 (1983); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). The responsibility for complying with the recordation requirements of FLPMA rested with appellants. Those who deal with the Government are presumed to have knowledge of the law and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978). The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, *supra*.

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, *supra*.

Appellants may wish to consult with BLM about the possibility of relocating this claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

